

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHNNY CYRUS,	:	No. 3:06-CV-01665
	:	
Plaintiff,	:	(Judge McClure)
	:	
v.	:	(Magistrate Judge Blewitt)
	:	
LIEUTENANT SHEPARD, et al.,	:	
	:	
Defendants.	:	

**ORDER**

July 26, 2007

**BACKGROUND:**

Plaintiff, formerly an inmate at the Federal Correctional Institution at Allenwood, White Deer, Pennsylvania (“FCI-Allenwood”), filed this instant pro se civil rights action on August 24, 2006. Plaintiff alleged Eighth Amendment violations against several defendants related to assaults and threats plaintiff allegedly suffered on August 15, 2005 and July 6, 2006.

This matter was initially referred to United States Magistrate Judge Thomas M. Blewitt.

On October 20, 2006, we adopted in full the magistrate judge’s report and recommendation and dismissed plaintiff’s claims against defendants Hogsten and Feltman. The remaining defendants have filed a summary judgment motion, to

which plaintiff has responded.<sup>1</sup> On July 6, 2007, the magistrate judge issued another report and recommendation, which recommends we grant the defendants' motion for summary judgment and dismiss this matter because plaintiff has failed to exhaust his administrative remedies as required under 42 U.S.C. § 1997e(a).

The plaintiff has not filed any objections to the magistrate judge's report and recommendation.

### **DISCUSSION:**

A district court reviews de novo those portions of a magistrate judge's report and recommendation to which a party objects. L.R. 72.3. The court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." Id.

We will adopt the magistrate judge's report and recommendation in full. As the magistrate judge noted, the plaintiff's complaint is subject to the administrative exhaustion requirements of 42 U.S.C. § 1997e(a). The Bureau of Prisons ("BOP") requires an inmate to file his administrative request within twenty days following the date on which the basis for the remedy occurred. The defendants have provided evidence that establishes that the plaintiff has filed three potentially

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<sup>1</sup> Plaintiff filed the same exact opposition brief in three other cases he has pending before this court, namely Case Nos. 06-1698, 06-2265, and 06-2051. We find plaintiff has failed to exhaust his administrative remedies in each case and we either have or will issue orders in each case accordingly.

relevant administrative grievances since July 6, 2006 - the latest date on which plaintiff allegedly suffered an Eighth Amendment violation at the hands of the defendants. All three grievances were not filed correctly, and the plaintiff was subsequently given an opportunity to re-file but failed to do so. Further, all three grievances would most likely be deemed untimely as the earliest was filed October 2, 2006, which is well after the deadline for filing an administrative complaint related to the alleged assaults and threats. Although the defendants are not exactly sure which, if any, of these three grievances pertained to this lawsuit, it is clear that plaintiff has not adequately exhausted his administrative remedies as required. For the purpose of judicial economy, we will not rehash the rest of the magistrate judge's sound reasoning in reaching his recommendation.

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

1. The court adopts in full United States Magistrate Judge Thomas M. Blewitt's report and recommendation. (Doc. Rec. No. 31.)
2. Defendants Lieutenant Shepard, Correction Officers Ray Alexander and Dorman's summary judgment motion is granted.
3. Final judgment is entered in favor of defendants Shepard, Alexander, and Dorman and against the plaintiff, for failure to exhaust administrative remedies.
4. The clerk is directed to close the case file.
5. Any appeal from this order is not taken in good faith.

s/ James F. McClure, Jr.  
James F. McClure, Jr.  
United States District Judge